

STATE OF COLORADO
Department of State

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Procedures and Guidelines
For Requests for Reconsideration of the Secretary of State's
December 17, 2007 Decisions Regarding Retesting of Voting Systems

January 8, 2008

Background

On December 17, 2007, Secretary of State Mike Coffman issued decisions on the result of court-ordered retesting of previously certified voting systems.

Summary of Retesting Decisions Issued December 17, 2007*				
Vendor	Software	Precinct Optical Scanner	Central Count Optical Scanner	Direct recording electronic (DRE)
Election Systems & Software (ES&S)	Decertified (Unity)	Decertified (M100)	Decertified (M650)	Decertified (iVotronic)
Sequoia Voting Systems	Recertified with conditions (WinEDS)	Recertified with conditions (Optech Insight, Insight Plus)	Recertified with conditions (Optech 400-C)	Decertified (AVC Edge II, Edge II Plus)
Premier Election Solutions (formerly Diebold Election Systems)	Recertified with conditions (GEMS)	Recertified with conditions (Accuvote)	Recertified with conditions (Accuvote)	Recertified with conditions (TSX-C, TSX-D)
Hart InterCivic	Recertified with conditions (System 6.0, Boss, Tally, Rally, Servo)	Decertified (Ballot Now)	Decertified (eScan)	Recertified with conditions (eSlate)
*Summary only. Please consult actual decisions for specific components, model numbers, versions, etc.				

The Secretary's decisions to decertify voting systems are subject to requests for reconsideration pursuant to section 1-5-621 (6), C.R.S., as follows:

1-5-621. Compliance - definitions. (6) Within thirty days after receiving notice from the secretary of state of the decertification of an electronic or electromechanical voting system, a political subdivision or provider of a voting system that is decertified may request in writing that the secretary of state reconsider its decision to decertify the electronic or electromechanical voting system. Upon receipt of the request, the secretary of state shall hold a public hearing to reconsider the decision to decertify the system. Any interested party may submit testimony or documentation in support of or in opposition to the decision to decertify the system. Following the hearing, the secretary of state may affirm or reverse the decision.

The purpose of these “Procedures and Guidelines” is to provide guidance to interested persons on how the Secretary of State intends to conduct the process relating to requests for reconsideration. The Secretary of State may modify or deviate from these Procedures and Guidelines as reasonable and appropriate to promote a fair, effective, and timely process.

Procedures and Guidelines

1. A separate proceeding under section 1-5-621 (6), C.R.S., will be conducted for each of the four decisions issued by the Secretary of State for which one or more requests for reconsideration are received by the Secretary of State. All requests for reconsideration that relate to any one of the four decisions will be consolidated into the proceeding for that decision.
2. Requests for reconsideration must be in writing and received by the Secretary of State by 5:00 p.m. on January 16, 2008 (the thirtieth day following the decisions on December 17, 2007). Requests may be submitted by fax (303-869-4860 or 303-869-4861) or by email (secretary@sos.state.co.us), but only if the original written request is received by the Secretary of State by 5:00 p.m. on January 23, 2008.
3. In accordance with the statute, requests may be submitted only by a provider (vendor) or by an affected political subdivision. A request from a political subdivision may be submitted by the governing body or by the chief election official or by both, but no more than one request may be submitted on behalf of a political subdivision.
4. Each request must be limited to the voting system of one vendor.
5. Affected political subdivisions may submit joint requests, and vendors may submit joint requests with one or more affected political subdivisions.
6. In accordance with section 1-5-621 (6), a request for reconsideration is limited to reconsideration of decertified components and may not include consideration of conditions imposed on recertified components, except that, a request may include reconsideration of one or more conditions imposed on recertified components that are expressly alleged to constitute a constructive decertification of the component (that is, either individually or as a group, one or more conditions are impossible or so impracticable or burdensome that they are equivalent to decertification). To the extent that the Secretary’s testing board made recommendations for conditions on decertified components, which, if imposed, may constitute a constructive decertification of the component, the vendor or affected political subdivision may also include a request for reconsideration of such conditions if it is expressly alleges that such conditions would constitute constructive decertification of the component.
7. Except as noted above, any conditions imposed on recertified components may be modified or removed by the Secretary of State in accordance with a separate informal process conducted by the Secretary of State pursuant to section 1-5-621 (7), C.R.S. For such informal process, impacted vendors and political subdivisions should notify the Secretary of State in writing about problems with such conditions, including a description of the problem and any suggestions for modification of the conditions. Informal discussions may occur from time to time, and the Secretary may modify such conditions pursuant to section 1-5-621 (7), C.R.S.

8. Each request for reconsideration pursuant to section 1-5-621 (6) must include the following:
 - a. The name of the requesting party.
 - b. The signature of an individual authorized to act on behalf of each requesting party (including each requesting party in joint requests).
 - c. An identification of the decision for which reconsideration is requested by reference to the name of the vendor, together with an identification of the specific components subject to the request (software, optical scanner, etc.).
9. The request should identify as specifically as possible the portion of the decision for which reconsideration is requested. If known, the request should include a general statement of the factual or legal grounds for the request. However, the request need not include in detail the specific factual and legal basis upon which the request is based.
10. It is suggested that requests for reconsideration involving decertified components focus primarily on:
 - a. The major factors identified by the Secretary of State in his letter of December 17, 2007; and
 - b. The reasons listed in the "Recommendation Overview" section of the Project Overview report that relate to accuracy, security, and accessibility.
11. For demonstrative purposes only, a sample request for reconsideration is attached to these Procedures and Guidelines.
12. Any request for reconsideration may be supplemented, modified, or withdrawn in whole or in part at any time. However, issues for reconsideration may not be added after 5:00 p.m. on January 16, 2007, except upon approval of the Secretary of State after written request for good cause shown.
13. If a request for reconsideration is received for any decision to decertify a voting system or component, a public hearing will be scheduled and held after public notice.
14. In late December 2007, vendors were provided an unredacted copy of the testing board's complete testing documentation and were allowed a limited period of time to identify material that they believe are not subject to public inspection under the Colorado Open Records Act. Any material so identified by the vendor as confidential will be reviewed by the legal counsel for the Secretary of State, and the Secretary of State shall make the final decision regarding which material is not subject to public inspection under the Colorado Open Records Act. The Secretary of State will then redact such confidential material (if any). Following completion of this process, the complete documentation as redacted will be made publicly available.
15. The public hearing will be held as soon as reasonably possible after public release of the redacted testing documentation and after allowing sufficient time for meaningful review of such documentation.
16. At the public hearing:
 - a. Any member of the public may provide written or oral testimony.
 - b. Evidence will be limited to the specific issues raised in the request(s) for reconsideration.

- c. Time limitations may be imposed on testimony in order to ensure timely completion of the hearing.
 - d. Presentations may be waived by any party in favor of written submissions or the presentations of others.
 - e. Joint presentation may be conducted by parties that submitted separate requests.
17. After the public hearing and after careful consideration of the evidence, the Secretary of State will issue a written decision.
18. Proceedings will be conducted with such flexibility and informality as may be reasonable to ensure timely, fair, and meaningful consideration.
19. Any objections or questions concerning these Procedures and Guidelines should be directed to the Secretary of State in writing, which may be faxed or emailed to the addresses listed in Item No. 2 above.
20. These Procedures and Guidelines may be revised from time to time. The current version will be posted on the “Voting System State Certification Program” section of the Secretary of State’s web site at the following location:
<http://www.elections.colorado.gov/DDefault.aspx?tid=501>.

Sample Request for Reconsideration

[Date]

Secretary of State Mike Coffman
1700 Broadway, Suite 250
Denver, Colorado 80290

Re: Request for reconsideration of your December 17, 2007 decision regarding the voting system of [name of vendor]

Dear Secretary Coffman:

On behalf [name of vendor or political subdivision(s)] and pursuant to section 1-5-621 (6), I/we are submitting this request for you to reconsider the decision that you issued on December 17, 2007, regarding the voting system of [name of vendor].

Specifically, [the vendor/political subdivision(s)] believes that the following portions of your decision were in error and requests your reconsideration:

1. The decertification of [component #1]. The major factors or deficiencies identified are erroneous or have been corrected, or may be mitigated or overcome with conditions [specify as applicable]. With respect to the restrictions associated with such component in the Project Overview report, the following conditions would mitigate or overcome the alleged deficiency. We request that such component be recertified with conditions listed in the Project Overview report, with the following exceptions [if any].
2. The decertification of [component #2]. The major factors or deficiencies identified are erroneous or have been corrected, or may be mitigated or overcome with conditions [specify as applicable]. With respect to the restrictions associated with such component in the Project Overview report, the following conditions would mitigate or overcome the alleged deficiency. We request that such component be recertified with conditions listed in the Project Overview report, with the following exceptions [if any].
3. The recertification of [component] with conditions. Such recertification is constructively equivalent to decertification because the following condition(s) is/are impossible, impracticable, or unreasonable [identify].

Additional supporting information is attached and/or will be provided by supplementary documentation to be provided at or before the public hearing on this request.

Respectfully submitted,

[signature]

[Name of individual]

[Title or position of individual]

[Name of vendor or political subdivision]